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THE LEASEHOLD PROPERTY BILL

THE anxiously awaited measure for the reform of the law of Landlord and Tenant has now appeared in Bill form and has had a mixed reception. No one who has followed recent Government pronouncements on this subject could have expected more than temporary expedients at this stage and if it be the fact that a comprehensive Bill to deal with rent control on a wider basis is not yet ready it would be foolish to advocate its preparation in a hurry. Whatever views one may hold about ministerial responsibility for not having had a more comprehensive measure in draft form ere now, it would only make confusion worse confounded if a codification of the Rent Restrictions Acts were rushed through without the very careful consideration which it will so obviously require.

The new Bill provides a two-year moratorium for tenants of residential premises who are faced with eviction on the expiry of ground leases and allows the county court to extend tenancies of shops on a year to year basis.

The provisions with regard to shops seem both practical and timely and will be a boon to many tenants if the Bill passes through all its stages without delay. No advantages are given to the tenant if his tenancy expires in the normal way before the commencement of the Act. Subject to this the tenant may obtain up to two extensions of his tenancy for a period of one year each, without the necessity of proving that his activities have caused goodwill to attach to the premises. The Landlord and Tenant Act, 1927, is not to be repealed and a tenant who has a good claim to a new lease under that Act should not be deterred from pursuing his claim by the introduction of this Bill. Under the Act of 1927 he may obtain a new lease for up to fourteen years which may be more advantageous than the limited protection now proposed, but if his claim under the former Act is likely to fail through his inability to prove the existence of adherent goodwill the new Bill will give him a temporary respite. The debates in Parliament may show why these new measures are confined to shops and are not extended to other business or professional premises.

Solicitors advising tenants of shops should follow the progress of this Bill with care as prompt action may become necessary as soon as it becomes law.

It was generally supposed that the protection given to tenants of residential premises would be restricted to those who are at present outside the Rent Restrictions Acts by reason only of the fact that the rents reserved under their tenancies are less than two-thirds of the rateable value of the property concerned. The new Bill does not adopt this test but applies to any tenancy for

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a term exceeding twenty-one years which is due to expire within two years after the commencement of the Act provided that the tenant or a member of his family is living in the property or a part thereof at the material time. This may produce curious results for, if the Bill goes through in its present form, it may extend contractual tenancies and suspend a landlord's right to enforce repairing covenants in cases where the Rent Acts already apply to the premises and where the existing protection has hitherto been thought adequate. Similarly the new provisions could extend to large houses with a rateable value far outside the Rent Act limits where no case for additional protection has been made out. In any event the method adopted, namely, the extension of the contractual tenancy, in these cases is open to criticism since it precludes the landlord from seeking possession on grounds of hardship and thus gives the tenant a wider protection than that afforded by the Rent Acts themselves.

No doubt these matters are of little consequence if the effects of the Bill will really be spent within two years, but in recent times we have seen temporary legislation remain in force for much longer periods than was originally intended.

CURRENT TOPICS

The Courts (Emergency Powers) Act, 1939, Again

A BARRISTER asked the Ulster Chancery Court in Northern Ireland on 7th November to indicate for his information and for that of his colleagues at the bar what its attitude would be in cases where proceedings for liberty to realise securities were instituted before 8th October, 1950 (the date on which the emergency which was the occasion of the passing of the Courts (Emergency Powers) Act, 1939, came to an end by Order in Council), but were heard after that date. He submitted that as the Act was procedural there was no necessity now that it was at an end for his clients to come before the court for relief. Mr. Justice CURRAN gave liberty for the matter to be entered as a summons for hearing. When told that there were a great many of those summonses pending his lordship said that there were plenty of able solicitors to advise their respective clients, and he could not set himself up as an adviser in a matter like that. In the case before the court there had been considerable difficulty in serving the summons, and eventually it had been served after 8th October.

Criminal Statistics

IN an address to the National Federation of Women's Institutes Conference on 21st November, the HOME SECRETARY gave some significant criminal statistics of recent years. In 1938 the number of indictable offences in England and Wales was (in round figures) 283,200. In 1946 the figure had risen to 472,500. In 1948 it was 522,700. In 1949 there was a substantial reduction—to 459,900, which was lower than for any year since the war. The provisional figures for the first six months of this year are slightly below those for the corresponding period of 1949. If we take "crimes of violence" to mean murder, attempted murder, manslaughter, wounding and assault, robbery and rape, we find that the total number of these offences known to the police was in 1938 2,773, in 1946 4,658, in 1947 5,206, in 1948 6,077, in 1949 6,033 and in the first six months of 1950 3,391. There was a steady rise in the first three years, a slight fall in 1949. Unfortunately the figures for the first half of 1950 show a renewed rise. Concerning flogging, the Home Secretary said that we had so far no evidence to suggest that the decision to abolish it as a punishment was wrong. With regard to the problem of crime among young people, he said the number of boys and girls found guilty of indictable offences in 1948 reached the highest ever recorded since the Children and Young Persons Act of 1933 came into force: 26,715 children under fourteen were found guilty of indictable offences in magistrates' courts in England and Wales in that year, and 16,991 young persons aged fourteen and under seventeen. The 1949 figures showed some improvement, 24,872 children under fourteen being found guilty of indictable offences and 15,064 young persons between fourteen and seventeen. The provisional figures for this year so far available do not give any ground for complacency, however. In the first half of this year 13,295 children under fourteen have been found guilty, a 2·6 per cent. increase over the first half of 1949, and 8,480 young persons between fourteen and seventeen, a slight increase over the figure for the first half of the previous year. Local authorities representing three-quarters of the population of the country have held or intend to hold conferences to consider this important matter, and many local area committees have been set up.

Sunday Observance and the Festival of Britain

IT is of the essence of majority rule that there are always some people who do not like the rulings of the majority. The inertia of modern governments with regard to matters outside the economic sphere and the strain of recent years have combined to circumscribe the scope of legislation. From the ATTORNEY-GENERAL'S speech in the Commons on 23rd November on the second reading of the Festival of Britain (Sunday Opening) Bill, it would seem that one of the unexpected results of the Festival may be a codification of the law relating to Sunday observance. How near the day may be can be judged from the Attorney-General's language: "Some day some government will have the time and the courage to codify the law and bring it into line with the spirit of the nation, which is firm in the Christian belief, and sufficiently confident in the belief to give reasonable play to the Christian doctrine of toleration." He welcomed the prospect of a Bill to deal with the common informer, which was to be introduced by the Member for Chertsey. We too welcome this prospect and can see no reason why any government should plead lack of either time or courage to deal with such an uncontroversial issue.

Recent Decision

In *Langford Property Company, Ltd.* v. *Batten*, on 16th November (*The Times*, 17th November), the House of Lords (LORD PORTER, LORD GODDARD, LORD NORMAND, LORD OAKSEY and LORD RADCLIFFE) held that where the rent of a flat let without a garage on 1st September, 1939, was £135 per annum and the rent of the same flat let with a garage in 1946 was £185 per annum, although the garage had previously been separately let to another tenant at £15 per annum, the flat with a garage was a different entity from the flat without a garage, and the standard rent of the flat with the garage was £185 per annum.

BANKRUPTCY LAW AND PRACTICE—V

The Public Examination

A debtor against whom a receiving order has been made has to undergo a public examination in court as to his conduct, dealings and property. There is one class of exceptions provided for in the Bankruptcy Rules, viz., where the debtor is a lunatic or physically unable to attend, and the court has made an order dispensing with the examination or directing that he be examined by some other method. (The court's jurisdiction to rescind a receiving order before the debtor has undergone his public examination has been discussed at p. 751, *ante*.)

The examination is held as soon as possible after the debtor has submitted his statement of affairs. The procedure is that the official receiver applies to the court for the necessary order, serves a copy of the order on the debtor, and by individual notice and advertisement in a local paper notifies the creditors of the order and of the time and place appointed for the examination. Service on the debtor may be effected by sending a copy of the order by registered letter to his last known address (*Re McGrath; ex parte Official Receiver* (1890), 24 Q.B.D. 466), and the service is valid even if the letter does not reach the debtor (*Re Levy* (1924), 68 Sol. J. 419).

The proceedings.—The debtor is examined on oath and it is his duty to answer all such questions as the court may put, or allow to be put, to him. Since the purpose of the examination is to protect the public as well as to obtain a full disclosure of his assets and of the facts relating to his bankruptcy in the interests of his creditors, he is not entitled to refuse to answer questions on the ground that by so doing he may incriminate himself (*Re Atherton* [1912] 2 K.B. 251). Before the question can be disallowed the court has to be satisfied by the debtor that the answer could not secure any further assets or rights to the creditors or protection to the public (*Re Paget; ex parte Official Receiver* [1927] 2 Ch. 85). He is first of all questioned by the official receiver, who must take part in the examination. He may be questioned by or on behalf of the trustee in bankruptcy, if appointed; also by any creditor who has tendered a proof, or his representative authorised in writing, or his proxy holder. A solicitor is a creditor's representative and must, if required by the court, produce his written authority (*R.* v. *Registrar of Greenwich County Court* (1885), 15 Q.B.D. 54).

The written notes of the examination are read over to or by the debtor and signed by him. Thereafter they may be used in evidence against him and are available for the inspection of any creditor at all reasonable times. The proceedings may of course be adjourned from time to time until the court is satisfied that the debtor's affairs have been sufficiently investigated and declares the examination closed. But it also has the power to adjourn the examination *sine die*, a step which is a serious matter for the debtor since the court may adjudge him bankrupt forthwith and the conclusion of the public examination is a condition precedent to the hearing of his application for discharge from the bankruptcy. The debtor, however, would have only himself to blame, for adjournment *sine die* is not ordered unless the debtor fails to disclose his affairs or to attend his examination or to comply with a court order, and has shown no good cause for his failure. Subsequently, the court may appoint a day for proceeding on application of the official receiver or the debtor.

The Adjudication Order

Usually the order is made on the happening of one of the four events specified in the Bankruptcy Act, 1914, s. 18 (1), viz., where the creditors have passed a resolution in favour of adjudication, or have passed no resolution, or have not met, or where a scheme or composition under s. 16 has not been approved within fourteen days after the conclusion of the debtor's public examination or such further time as the court may have allowed. The necessary application is made by the official receiver or a creditor and, in the words of the subsection, "the court shall adjudge the debtor bankrupt." But the word "shall" is used here in a directory and not in a mandatory sense, and the court is not bound forthwith to make an adjudication order. It may for good reason adjourn the application in the exercise of its general power under s. 109 (2) to adjourn any proceedings before it upon such terms, if any, as it may think fit to impose (*Re Lord Thurlow; ex parte Official Receiver* [1895] 1 Q.B. 724).

There is jurisdiction under s. 18 (1) to make an adjudication on the official receiver's application without any previous notice to the debtor of the intended application (*Re Ponsford; ex parte Ponsford* [1904] 2 K.B. 704). In practice, however, notice is given to the debtor, except in a case where he has absconded or otherwise absented himself, in order that he may have an opportunity of objecting to the adjudication.

Apart from the power of annulment on approving a composition or scheme under the Bankruptcy Act, 1914, s. 21, the court may under s. 29 annul an adjudication order where—

(*a*) in its opinion the order ought not to have been made; or

(*b*) it is proved to its satisfaction that the debts of the bankrupt have been paid in full.

There is cause for annulment under (*a*) where the bankruptcy proceedings are an abuse of the process of the court, a point which is sometimes taken when the debtor has presented his own petition. It is not an abuse of process for a debtor to present a bankruptcy petition with the object of evading the pressure of a judgment summons (*Re Painter; ex parte Painter* [1895] 1 Q.B. 85), but while he may conceivably be allowed two bites at this particular cherry he will certainly not be allowed three (*Re Betts; ex parte Official Receiver* [1901] 2 K.B. 39). The question of an abuse of process was raised in the recent case of *Re Harry Dunn; ex parte the Official Receiver* [1949] Ch. 640, where a debtor, against whom a bookmaker had issued a writ in respect of a gaming debt, filed his petition and was adjudicated bankrupt. After the adjudication, the debt in question being the only scheduled liability, the bookmaker intimated that he would not lodge a proof. Subsequently the official receiver acting as trustee applied for annulment, the contention being that the bankrupt owed a single debt, which was unenforceable, and that it would be a misuse of bankruptcy proceedings if they could be used in such a case. It was also submitted that, if there was doubt as to whether or not there was a debt, it was the duty of the court in bankruptcy to decide the question and, in deciding it, to have regard to evidence obtained after the adjudication order was made, which in this case showed that there was in fact no enforceable debt. The Court of Appeal dismissed the appeal. It was not clear on the face of the writ that there was no case for the debtor to answer, and while the court in bankruptcy

was entitled to have regard to the actual state of affairs at the date of adjudication (which might appear from evidence subsequently filed), it was not entitled to take into account facts which occurred after the date of the order. The fact that the debtor had filed his petition to protect himself from evils he might otherwise suffer and not with the object of securing a fair distribution of assets amongst his creditors was not an abuse of the process of the court. The judgment of Denning, L.J., was based on the ground that the test to be applied is not the enforceability or otherwise of the debt but whether or not the debtor honestly believed on reasonable grounds that he was unable to pay his debts. If the debtor did so believe, as the evidence showed in the case under consideration, the adjudication is valid and should not be annulled *ab initio*.

With regard to the second ground for annulment stated in s. 29 (1), viz., payment in full of the bankrupt's debts, the word "debts" means those which have been actually and properly proved in the bankruptcy. Releases under seal by creditors, without any consideration, of debts owing to them is not payment in full within the meaning of the subsection (*Re Keet; ex parte Official Receiver* [1905] 2 K.B. 666).

The jurisdiction conferred upon the court to annul an adjudication is discretionary and the order may be refused if, having regard to the bankrupt's conduct, it seems right to do so, as in *Re Taylor; ex parte Taylor* [1901] 1 Q.B. 744, where the bankrupt had failed to disclose a sum of money which was part of his assets and subsequently handed to the official receiver a portion of it sufficient to pay his debts and the costs of the bankruptcy in full. On the other hand, the Bankruptcy Acts are intended to be a complete code on bankruptcy law and a court is not at liberty to annul an adjudication upon any grounds that may commend themselves to it but must find in the Acts some power enabling the annulment to be made (*per* Cave, J., in *Re Gyll; ex parte Board of Trade* (1888), 59 L.T. 778, at p. 779).

An order of annulment which recites payment of all the debts of the bankrupt in full creates an estoppel by record, and a plaintiff who knew of the receiving order but had refrained from proving in the bankruptcy cannot thereafter recover by action a debt for which he could have proved (*John* v. *Mendoza* [1939] K.B. 141). I.H.C.

Costs

ADMIRALTY—IV

THE last point with which we were dealing in our previous article on this subject was the allowances made in respect of the detention of witnesses, and a correspondent has raised the question whether, where the greater part of the crew is necessarily required for the purpose of the trial, it is reasonable and proper for the owner to detain the vessel. The short answer to this point is that the owner can please himself, but he cannot expect the other side to pay him for the profit which he may have lost as a result of being deprived of the use of his vessel, even if he is successful in his action. All that the other side will be bound to pay is the reasonable and proper expense properly incurred in procuring evidence and the attendance of witnesses (see R.S.C., Ord. 65, r. 27 (9)), and the profit which the owner may have lost as a result of detaining the vessel because his crew were required for the trial would not be regarded as an expense falling within the ambit of sub-r. (9).

Closely bound up with this question is the further question as to whether the other side could be expected to pay for the expense of sending a substitute to relieve a member of the crew of a vessel in a case where that member of the crew was an essential witness. In *The Massilia* [1926] P. 180, such an expense was disallowed as not being a proper and reasonable expense of procuring the attendance of a witness, but the President did observe that the decision was given on the particular facts of the case, and it is not unreasonable to suppose that cases may arise where such an expense would be allowed as a proper item in a successful party's bill of costs. However, it is quite clear that the expense of providing a substitute could not be regarded as an allowable item as a general rule, and in claiming such an item it would be necessary to show (*a*) that the witness was essential to the success of the party's case, (*b*) that it would have been improper or impracticable to examine him before the trial or to take his evidence on commission, and (*c*) that it was impossible to secure his attendance at the trial without providing a substitute.

We have been dealing so far with collision damage cases, but the same principles would apply *mutatis mutandis* to salvage and other actions in the Admiralty Division of the High Court. In salvage cases the presence of witnesses is often essential to prove the nature and quality of the services rendered, and similar questions relating to the allowances and to detention will arise.

It will be evident that in many cases the witnesses produced in court will be foreigners unable to give evidence in English, and in such cases the reasonable and proper fees of an interpreter will be allowed as a proper expense in a party-and-party taxation. What are reasonable and proper fees will be wholly within the discretion of the taxing master, or rather the registrar, but in respect of most European languages a fee of three guineas a day would not be regarded as unreasonable, whilst higher fees might be allowed in respect of less common foreign languages.

If there are foreign witnesses it is reasonable to suppose that some of the documents used in the case will be in a foreign language and the proper fees for translating the documents into the English language will be allowed. Here again there is no prescribed scale, and the allowance is within the discretion of the registrar, but in the case of most of the European languages a fee of three shillings per folio of seventy-two words will be allowed. Less common and more difficult foreign languages will be allowed at a higher fee. Thus, 7s. 6d. might be allowed for Chinese. It would seem, on the authority of *Re Bowes* [1900] 2 Ch. 251, that where the translations were done in the office of the solicitor to the successful party then the solicitor would be allowed the normal fee for translating the documents necessarily translated for the purpose of the action, and, presumably, if the other side agreed to the use of a member of the opposite solicitor's staff as interpreter then he too would be allowed the usual fee as such.

When compiling a bill of costs in respect of Admiralty matters it must be remembered that there is an official shorthand writer who will attend in court at the hearing of the action and whose fees for the attendance will have to be met by the parties. They are recoverable as an item in the successful party's bill of costs. The costs of a transcript are not, however, recoverable unless the judge so orders. It may be of interest to notice here that 3s. 6d. will be allowed on

a party-and-party taxation for a letter to the shorthand writers with a cheque for their charges.

There is another expense in Admiralty matters which does not arise in other Divisions of the High Court, and that is the fees paid to the Trinity Masters. Trinity Masters do not attend to assist the judge as a matter of course, and the party requiring their presence must complete and file a request or *praecipe* for which a fee of 6s. 8d. is allowed, whilst the court filing fee is 10s. At the conclusion of the trial a note of the Trinity Masters' fees will be sent to the plaintiff in the action, who will remit the amount direct to Trinity House and recover a moiety thereof from the defendant's solicitors. The practice with regard to Trinity Masters' fees is that they will be payable as to one-half by each party in both-to-blame cases, and if either party is entitled to recover any proportion of his costs, then he will include the one-half which he has paid in his bill of costs and will thus recover from the other side his proper proportion of that one-half. Where there is no order as to costs then each party in a both-to-blame case will bear one-half of the Trinity Masters' fees. An attendance for which a fee of 6s. 8d. will be allowed may be charged in the bill of costs for attending to pay the Trinity Masters' fees.

We now come to the question of counsel's fees. Counsel's fees are allowed in respect of settling pleadings, including, except in salvage cases, a fee to settle a reply. A fee to counsel is allowed for settling a preliminary act in collision damage actions, although in a party-and-party taxation the latter fee is usually limited to one guinea. It is also usual to allow a fee to counsel in collision damage cases to advise on evidence, but a similar fee is not allowed as a matter of course in salvage cases, although in the latter type of case a fee to counsel to advise as to the sufficiency of an offer of settlement or the amount of a tender has been allowed.

On the trial of the action, there is no hard-and-fast rule as to whether one, two or three counsel are allowable. In normal collision damage cases it would be unusual for objection to be taken to the presence of two counsel, but the case would have to be exceptional for three counsel to be allowed. It would be regarded as exceptional if the action involved voluminous papers and documents with numerous witnesses and necessitated a lengthy hearing. In this respect, reference may be made to the case of *The Mammoth* (1884), 9 P.D. 126.

Counsel is entitled to his brief fee where the brief is delivered even if he does not attend the court at trial, and he will be entitled to his brief fee if the brief is delivered and the case is settled before the day of the hearing. Whether or not the costs of drawing and copying the brief and accompanying documents and counsel's fee thereon will be allowed in a taxation between party and party will depend on whether or not the brief was delivered prematurely. What amounts to premature delivery of the brief will depend entirely on the circumstances of the case, but in normal collision damage cases, where there are numerous documents and witnesses' proofs and many facts to be assimilated, it would not be regarded as unreasonable to prepare and deliver the brief, say, seven days before the hearing of the action.

The question of refresher fees to counsel is one that causes a certain amount of difficulty on the taxation of a bill of costs between party and party. R.S.C., Ord. 65, r. 27 (48), provides that refresher fees to counsel shall be allowed at the rate of from five to ten guineas to leading counsel and from three to seven guineas for the junior counsel. Sub-rule (29) of r. 27, however, gives a taxing master discretion to increase these fees in suitable cases, and in practice substantially larger fees are allowed, calculated by reference to the amount of the brief fee. Precisely what will be allowed in any particular case will depend entirely on the facts, and in fixing the amount of the refresher fees a taxing master would have some regard to the total amount which counsel is to receive in respect of the case. A note on p. 415 of Roscoe's Admiralty Practice, 5th ed., states that a taxing master will usually allow from one-third to one-half of the original brief fee as a refresher, but it would be unsafe to regard this as a fixed and unalterable rule, because if the taxing master considered the original brief fee to be high, having regard to the particular circumstances of the case, then he would probably allow a smaller proportion by way of refresher fees.

A refresher fee is allowed in respect of each five hours or part of five hours during which the action lasts, beyond the first five hours, and in calculating the time occupied it will be remembered that the lunch-time interval is not now to be included (see *Wright* v. *Bennett* [1947] K.B. 828).

J. L. R. R.

A Conveyancer's Diary

POSSESSION PENDING COMPLETION

THE housing shortage and the danger of requisitioning have combined to make it a common practice nowadays to let purchasers into possession pending completion of the sale, and one consequence of this practice (which was also referred to from a different aspect at p. 593, *ante*) has been an increase in the number of applications for what are called "*Greenwood* v. *Turner* orders." If a purchaser has been let into possession pending completion otherwise than in pursuance of one of the terms of the agreement for sale, and he has not completed his purchase on or before the date fixed for completion, the vendor after issue of a writ may move the court for an order that the purchaser either (*a*) pay the balance of the purchase money (with interest if applicable) into court on or before a given date, or (*b*) give up possession of the premises on or before that date. The time allowed under the present practice to a purchaser to make up his mind whether he will pay the balance of the purchase money into court or vacate the premises inevitably varies with the circumstances, but twenty-eight days is a not unusual period to ask for unless there is some special reason for fixing some other period.

As Harman, J., pointed out in the recent case of *Pearlberg* v. *May* [1950] W.N. 530, these orders have been made by judges in Chancery for nearly 150 years; but they are always referred to as "*Greenwood* v. *Turner* orders" after the case of that name reported at [1891] 2 Ch. 144, because it was then, presumably, that the practice crystallised. In that case the vendor's motion was for an order upon the defendant-purchaser simply to lodge the balance of the purchase money in court before a given date, but after considering a number of earlier authorities, Kekewich, J., concluded that the practice had always been to give a purchaser, in the circumstances postulated, an option of going out of possession; and since then the order in the alternative form has become standard.

This is an extremely useful procedure for bringing a dilatory purchaser up to the mark, but there is one important limitation to which it is subject. In the normal case this summary remedy is not available to a vendor if the purchaser has been let into possession under a term of the agreement for sale (*Pryse* v. *Cambrian Railway Company* (1867), L.R. 2 Ch. 444). It is therefore a matter of some importance for the vendor and his advisers, if the purchaser is to be let into possession pending completion, to agree to his taking possession not as part of the main agreement but by some collateral bargain, and if evidence is required of the bargain in this respect to provide it by some form of licence made independently of the agreement for sale, and not as one of its terms. Most of the common-form conditions of sale in use at the present time incorporate a condition dealing with the situation which arises when a purchaser is let into possession pending completion, but the mere fact that such a condition appears in the contract does not, I think, entitle a purchaser who has been let into possession by some verbal agreement between the parties, for example, to say that he has been let in under one of the terms of the contract; these common-form conditions merely provide, conditionally, for such things as the payment of interest in the event of possession being given pending completion, and the right to such possession must arise, if it arises at all, as the result of an express bargain between the parties.

But the immunity of a purchaser who derives his right to take possession pending completion from the agreement for sale itself from any danger of having a "*Greenwood* v. *Turner* order" made against him is not absolute. It may be lost if (*a*) during the period of possession the purchaser has exercised acts of ownership in relation to the premises so as to alter their nature (*Dixon* v. *Astley* (1816), 1 Mer. 133), or (*b*) the agreement provided expressly for the retention by the vendor of his lien for the unpaid purchase money (*Cooper* v. *London, Chatham and Dover Railway Company* (1866), 14 W.R. 985). And whatever the circumstances in which the purchaser is let into possession pending completion, whether under and as one of the terms of the agreement for sale or not, if during his occupation he has diminished the value of the premises the vendor is at liberty to move for an order for payment into court by the purchaser of the balance of the purchase money simply, and the purchaser will not be given the option of giving up possession as an alternative to such payment in (*Lewis* v. *James* (1886), 32 Ch. D. 326, 330).

The making of a "*Greenwood* v. *Turner* order" may have one of three results: The purchaser may complete before the expiration of the period specified in the order; or he may give up possession, leaving the vendor to such remedy as he may have in the circumstances under or apart from the contract; or he may pay the balance of the purchase money into court. In the last of these three events, at any rate where the contract provided for the payment of interest on the balance of the purchase money from the date fixed for completion, interest at the rate specified in the contract will be ordered to be paid on such balance, and interest is then paid in whatever the reason for the purchaser's delay in completion, for the payment into court under the order is made without prejudice to any question between the parties, whether it arises on the title or otherwise, which is then left to be determined in the specific performance proceedings the initiation of which by the vendor is the normal preliminary step before a "*Greenwood* v. *Turner* order" is made. But not until the recent case of *Pearlberg* v. *May*, *supra*, did the question arise whether a vendor could claim interest upon the balance of purchase money lodged in court by a purchaser in pursuance of a "*Greenwood* v. *Turner* order" for a period subsequent to the date of payment in.

The facts in this case were, very shortly, as follows: The plaintiff agreed to purchase certain property from the defendant, and the contract (which incorporated the National Conditions of Sale) stipulated that the balance of the purchase money should carry interest at the rate of 5 per cent. from the date fixed for completion until payment. The plaintiff-purchaser, having been allowed into possession pending completion, complained that the vendor had not given her vacant possession of all the property agreed to be sold and delayed completion, and when informed by the vendor that he intended to resell under the contract, issued a writ for specific performance against the vendor. After delivery of the statement of claim by the purchaser, the vendor moved the court for (in effect) a "*Greenwood* v. *Turner* order," which was made in the usual form giving the purchaser the option of paying into court the balance of the purchase money with interest at 5 per cent. from (in effect) the date fixed for completion, or giving up possession before a certain date. No *terminus ad quem* of the period during which such interest should be paid was fixed by the order, and when the purchaser eventually abandoned her contention that she had not been given possession of the whole of the property agreed to be sold, the only question remaining was this question of interest. The vendor contended that the purchaser should pay interest at the contractual rate, on the balance of the purchase money, despite its lodgment in court under the order made against the purchaser, up to date; the purchaser, on the other hand, contended that interest was so payable only up to the date of payment in, whereafter the vendor had to be content with whatever interest the principal sum had earned while on deposit in the Pay Office.

Harman, J., held that the vendor's entitlement to interest on the unpaid balance of the purchase money under the contract of sale was unaffected by the order made, the object of which had been merely to provide a security to the vendor who, by reason of the purchaser's possession of the premises, had been deprived of the option which otherwise would have been his, on the purchaser's delay, of taking the rents and profits in lieu of interest. It does not appear very clearly from the short report so far available whether this decision was based entirely on the provision in the National Conditions (cl. 6 (1)) binding a purchaser who is let into possession pending completion to pay interest at the contractual rate until actual completion or until he gives up possession, but it would seem not; for independently of that condition a purchaser has no option but to pay interest (cl. 5 (3)) if the delay in completion is due to his own default (as it was in this case). That is also the general law, so that it would seem that this decision is wide enough to cover the case of a purchaser let into possession pending completion who is not expressly bound by contract to pay interest by reason of being so let into possession or otherwise, and who, through his own default, does not complete until after a "*Greenwood* v. *Turner* order" is made against him, the liability to pay interest on the balance of the purchase money being then unaffected by the payment into court of the balance in accordance with the terms of the order. If that is so, then the decision in *Pearlberg* v. *May*, *supra*, may be treated as of general application, despite the fact that the contract in this case did, in fact, provide expressly for the payment of interest by the purchaser in two events, both of which occurred, of the purchaser being in default and of her having been let into possession pending completion.

"A B C"

Landlord and Tenant Notebook

REPAIRING COVENANTS: ALTERATIONS AND WASTE

WHEN writing on "De-requisitioning demised dwelling-houses" in last week's issue, I raised the question whether support could be found for the proposition that "repairing covenant" in the Landlord and Tenant (Requisitioned Land) Act, 1944, could be said to include a covenant against alterations, such as may have been infringed when a local authority has converted a single-occupation house into flats. The statutory definition, though comprehensive, does not (as pointed out) throw any direct light on the question, which is of great importance to tenants who have had occasion to rely on the protection conferred by the Act; hence the interest in such authorities as may assist.

In *Doe d. Vickery* v. *Jackson* (1817), 2 Stark. 293, Lord Ellenborough accepted an argument, supported by three eminent counsel, that the defendant had broken a "general covenant to repair" by making a doorway and door between the demised house and the one next door. The report is regrettably terse, and, as will be seen, it is particularly unfortunate that we are not told more about the wording of a "general" covenant to repair.

The early thirties of the last century produced two new authorities. First we had *Doe d. Dalton* v. *Jones* (1832), 4 B. & Ad. 126; a covenant in a 40-year lease granted in 1819 obliged the tenant "to repair and keep repaired" the demised house, but "together with such buildings and improvements and additions as might at any time be erected." In 1832 the defendant tenant pulled down part of the front and converted the lower portion into a shop and exhibition room for pictures. This involved stopping up an existing doorway in a partition and making a new one in a different place. It was held that the covenant cited had not been broken, as it provided only against non-repair and was the equivalent of a covenant against permissive waste; but the court was also influenced by the considerations that the lease contemplated improvements and contained no restrictions on carrying on business.

Next year, in *Doe d. Wetherell* v. *Bird* (1833), 6 C. & P. 195, a very comprehensive covenant was examined; it followed a covenant to effect certain repairs, and provided that the tenant should and would as often as need or occasion should be or require "repair, uphold, support, sustain, *maintain*, glaze, pave, scour, etc., paint, amend, *preserve*, and keep in repair the said messuage or tenement . . . and all and singular the houses, outhouses, bakehouse . . . other buildings, *brick walls*, gates, pales, rails, etc. . . . with all and all manner of needful and necessary reparations, fencings, cleansings and amendments whatsoever." The property was a house in Kensington, the lease was for 61 years from 1802, and a sub-tenant had taken down a wall dividing the courtyard at the front of the house from another yard at the side of the house. In his summing-up Denman, C.J., told the jury: "I think that the taking down of the wall is also a breach of the covenant respecting the *upholding* of the walls." The learned judge had also commented unkindly on the verbiage of the covenant; but I have mentioned a good deal of it, and italicised certain words, because such covenants do occur in leases of houses which have been requisitioned for bomb victims and converted into flats during the period of requisition.

Rather less elaborate, though not limited in language to such expressions as "repair," was the covenant construed in *Borgnis* v. *Edwards* (1860), 2 F. & F. 111; it occurred in what appears to have been a building lease, the grantee covenanting "to repair, *uphold and maintain* the said houses." He had, after the houses had been completed in 1855, pulled down a dwarf wall and palisades at the back and replaced it by a new wall in which there were three doors; the lessor's main apprehension was, it is pretty clear, that a provision expressly negativing the existence of any right of way over the land at the back should be infringed, and a certain amount of hair-splitting in which it was pointed out that the doors need not be used was indulged in; as regards the repairing covenant, all one need record is that Byles, J., told the jury that it was doubtful whether it applied to the fences (and they found for the plaintiff). But, in a case which followed soon afterwards, *Gange* v. *Lockwood* (1860), 2 F. & F. 115, the tenant of rooms in a house who had covenanted to keep them in good and tenantable repair and so to surrender the premises free from dilapidations pleaded, in answer to a claim based on his opening two doorways "thereby destroying a portion of the walls," that he *had* kept the rooms in repair, and this did not avail him. The report may be imperfect, for while the covenant is stated to have been as set out above, Willes, J.'s direction to the jury was that "a covenant to repair, uphold and maintain *or* keep in good repair raises a duty not to destroy the demised premises; and the pulling down, wholly or partly, is a breach of *such* a covenant."

However, this seems to indicate that in the learned judge's view it did not matter whether such a covenant did specify upholding or maintaining, and as the previous case seems to have been lost not because of any lack of verbs but rather through absence of nouns, it distinctly gives some support for the view that a conversion into flats is a breach of a covenant to repair, so that the Landlord and Tenant (Requisitioned Land) Act, 1944, does protect tenants who find their de-requisitioned property thus altered. And further support may possibly be found in a more recent case, *Heard* v. *Stuart* (1907), 24 T.L.R. 104. The plaintiff in that case objected to his tenant (twenty-one-year lease) allowing the side of a wall to be used as a bill-posting station; and while he relied on, and succeeded on, a number of covenants (nuisance, alteration of external appearance), Joyce, J., definitely held that a covenant "to keep the premises in good and substantial repair and condition" had been broken because "it was proved and not disputed that what had been done was injurious to the wall." One would, of course, like to know whether this meant that the bill-posting had actually weakened the wall as a wall; if so, the decision would not be of use in every case of conversion, for some local authorities certainly carried out their work in a workmanlike manner.

Lastly, on this point, someone would certainly invoke, in the circumstances visualised, *Hyman* v. *Rose* [1912] A.C. 623, in which a disused chapel was found to have been converted into a cinema, the structural alterations being substantial, but in which relief was (conditionally) granted against forfeiture. The covenant was of the wordy variety exemplified by *Doe d. Wetherell* v. *Bird*, *supra*; the principles governing relief were in issue rather than what covenant had been broken and how; but the report of *Rose* v. *Spicer* [1911] 2 K.B. 234 (C.A.), shows that the Court of Appeal considered that the opening of a new door, the removal of railings and of a dwarf wall, and the removal of gallery staircases were (especially, in view of *Gange* v. *Lockwood*, *supra*, the opening of the new door and the removal of the wall) breaches of the

covenant to repair and keep in repair. And *Gange* v. *Lockwood* was, of course, a case in which the covenant said nothing about upholding, preserving, etc. The decision in favour of relief *without complete reinstatement* was reached in the House of Lords, reversing the Court of Appeal on this point; but the view that there had been breaches of covenant was upheld, the remedying of such being made a condition.

On the whole it seems that, while the leases of the kind I have in mind hardly contemplated improvements and certainly did not contemplate conversion into flats, having regard to the obvious object of the Landlord and Tenant (Requisitioned Land) Act, 1944, that statute should provide a lessee with a defence against claims for breach of covenant. There remains the possibility of claims for waste.

One report of *Jones* v. *Hill* (1817), namely, that in 7 Taunt. 392, warrants the proposition that a landlord has no right of action for waste when covenants deal with the same subject, as they mostly would in the type of case considered. This is, however, at variance with the decisions in *Kinlyside* v. *Thornton* (1776), 2 W. Bl. 1111, and *Marker* v. *Kenrick* (1853), 13 C.B. 188; if these be sound law, it looks as if the definition of "repairing covenant" in the Act had omitted something after all, for there is no implied covenant not to commit waste (see *Defries* v. *Milne* [1913] 1 Ch. 98 (C.A.): waste is a tort). The tenant would then have to fall back on a plea that what had happened was not waste and rely on numerous authorities, beginning perhaps with a 1492 decision reported in Keilwey 37b, when the Abbot of Stratford sued a tenant who had enlarged a parlour in demised premises at the expense of the adjoining room and emphasis was laid on prejudice to the reversion as an essential element. The emphasis has often been repeated, e.g., in *Hyman* v. *Rose*, *supra*; and, regard being had to the increased demand for flats in preference to large houses (see *Portman* v. *Latta* (1942), 86 SOL. J. 119, on the difficulty of assessing damages when a covenant is concerned in such cases, and Denning, J.'s rhetorical question: "What damage has the plaintiff really sustained from the breach?" in *Westminster* (*Duke of*) v. *Swinton* [1948] 1 K.B. 524, a conversion into flats case), such circumstances may justify an application for varying the lease under the Housing Act, 1936, s. 163, or the Housing Act, 1949, s. 11; but that is another story. R. B.

HERE AND THERE

BETTER THAN CURE

THE Chinese, we were always given to understand, in the days when we viewed their quaintness from afar with a mildly superior tolerance, long ago before the cultural message of Karl Marx had penetrated the Great Wall, the Chinese, it was reported, ran their medical services on the amusingly topsy-turvy principle of paying their doctors when they were well and not paying them when they were ill. The doctors thus had a vested interest in keeping their patients well and everything to lose by letting them sicken. Whether or not this was true or just one of those travellers' tales, thought something along these lines seems to lie behind the proposal of Mr. S. N. Grant-Bailey, law tutor at Christ Church, for a new technique called "Preventive Law," which he hopes to develop in the new law school at Southampton University of which he has been appointed director. The idea, like all bright ideas, is essentially simple. Prevention is better than cure. A stitch in time saves nine. Look before you leap. Just as the prudent see their doctors and dentists every so often for a regular check-up, so they should see their lawyer, not just when they've already got a packet of trouble, but long before trouble troubles them. Thus, before you get yourself mixed up in the labyrinthine intricacies of the law of landlord and tenant on however small a scale, before you enter into the exasperating relationship of master and servant, if you are so fortunate as to have the chance, before you set pen to that most tricky and technical of all legal documents, your last will and testament, see a preventive lawyer about it.

EDUCATE THE CLIENT

So far we couldn't agree more. Home-made wills, the gentlemen's agreements to which business men who ought to know better are so often addicted, the seductive short cuts by which laymen think to sidestep technicalities and the unintelligible jargon of the lawyers, are the royal roads to the High Court and county court litigation from which all virtuous legal advisers keep their clients if they can. It is far more the client than the lawyer who needs educating in preventive law. Fundamentally the human race still believes in magic. When an orgy of fine careless rapture has tied it inextricably into knots, morally, socially, legally, physically, financially, it firmly and hopefully believes that if it goes to the right sort of witchdoctor he can produce a painless and inexpensive formula that will resolve all perplexities. The physician will hand out a bottle (not too nasty). The scientist will press a button and Utopia will materialise. The politician will "do something." (Of course, "there ought to be a law about it.") The solicitor will speak to your enemies in the gate, write them a letter, tell them "Let right be done" and they will surrender instantly at discretion. But a brief conversation with your legal adviser generally reveals the depressing fact that there is no magical substitute in law for common sense and reasonable foresight. Of course, if the psychiatrists ever get their hands on the legal profession (and there is little ground that they apparently fear to tread on) things might well assume a slightly different complexion. I heard lately of a gentleman of that calling, who professes to throw in legal advice for good measure and advised proceedings to have a certain will declared invalid on the ground of the bad psychological effect its provisions would have on his client.

PRACTICAL APPLICATION

Now looking at recent litigation, how would preventive law work there? The great *Diplock* case with forty-eight claimants, 120 actions, two visits to the House of Lords and ten years in the courts? That fine branching tree, I'm afraid, sprang from the seed of a lawyer-drawn will. But, with that dreadful example before his eyes, no preventive lawyer will ever again put an "or" between "charitable" and "benevolent." The "360-day baby"? No, that was not really a job for the preventive lawyer either. The lady, a duke's cousin, who was kicked by an earl's horse at Ascot? Perhaps a worldly-wise lawyer could have advised her in advance which was the more dangerous end of a horse, but legal education has so far omitted to prepare the neophyte to deal with clients on that footing. The boy's catapult and the libel action arising out of it? Here the preventive lawyer could have let himself go. Obviously no prudent parents will henceforth allow their son to take seisin of a weapon of such varied potentialities without most carefully considering their liability for his tortious acts. Nor, on the other side, will the author of a complaining letter to the headmaster dare to indite it *proprio motu* and without full legal advice on all its bearings. Incidentally it did not strike me that Hilbery, J., in instructing the young catapultist that cherry stones are better ammunition than paper pellets, was adopting a strictly preventive role. The case of the "jungle girl" in Singapore? Perhaps an early

visit to the preventive lawyer might have saved a lot of trouble there. Certainly voices in Lincoln's Inn have been heard to suggest that a rapid move to make her a ward of court right at the start might have simplified the situation quite a lot. Matrimonially the preventive lawyer would have his toughest but (if he could succeed in coping) his most rewarding assignment. Strictly speaking, in a perfectly reasonable world, his activities ought to start long before the marriage. "When can I see you again?" How much of the trouble in the world has flowed from that little question! See your preventive lawyer before you use it. The proposal of marriage or other declaration—see him about the natural and probable consequences. Ask him for a full list of marital obligations with notes on the pitfalls of the English divorce law. If he took his job earnestly enough the preventive lawyer could finally prevent the propagation of the human race. Incidentally, the benefits of preventive law would not apparently be all on one side. If introduced all over the country it could, says Mr. Grant-Bailey, bring more work to the lawyers than ever before.

RICHARD ROE.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Charitable Trust—ALL TRUSTEES TO JOIN IN CONVEYANCE OF TRUST PROPERTY

Q. In 1923 a freehold recreation ground was conveyed to twelve persons as joint tenants who in the same year by deed (*inter alia*) declared that they held the land "upon trust to permit the same to be used as a recreation ground for the use of the persons attending" a certain Sunday school. A clause in the deed of declaration provided as follows: "If at any time in the opinion of a majority of three-fourths of the trustees present and voting at a special meeting of the trustees (and of which meeting notice calling it shall have been delivered or sent by post to the trustees) the trust premises are not being used by the persons attending the Sunday school for the purposes of a recreation ground (of which finding a resolution of the trustees shall be binding and conclusive of the fact set forth therein) then the trustees shall sell the trust premises." In compliance with the above clause a meeting of the trustees was duly held at which, out of the five trustees who attended, four voted in favour of and one against a finding that the provisions of the clause applied and therefore the trust property must be sold. Can the four trustees who voted in favour of the sale convey the legal estate alone or must they also join the other six of the surviving trustees in the conveyance?

A. In our opinion, as this clause affects a matter of title, it must be construed strictly, and since it says that "the *trustees* shall sell the trust premises" this means all the trustees alive at the date of the conveyance. Therefore absent and dissident trustees must join in the conveyance, particularly as the legal estate (presuming a charitable trust) is vested in all the trustees. Unless all the trustees are prepared to join in the conveyance our view is that an order of the court must be obtained compelling them to convey in accordance with the trust and appointing a person to execute the conveyance on their behalf should they persist in their omission or recalcitrance.

Rent Acts—REDUNDANT PARSONAGE HOUSE

Q. A is the annual tenant of a redundant Church of England vicarage which she has occupied for upwards of twelve years. The parish church in connection with which the vicarage was used no longer exists, having been recently pulled down, and the parish is administered from an adjoining one which has a parsonage house of its own. A has been in negotiation for the purchase of this property for some time, but no decision can be reached, and it is thought that attempts may be made to obtain possession of it, so that it may be sold with vacant possession. Parsonage houses of the Church of England are outside the Rent Restrictions Acts, being subject, it appears, to their own system of control, but it seems doubtful whether this is so where the house has become redundant and could not be required by the incumbent. Will you please let me have your opinion as to the protection, if any, the tenant may have, and on what grounds.

A. As our inquirer states, the reason parsonage houses are excluded from the Rent Restrictions Acts is that they are subject to their own system of control. This is imposed by the Pluralities Act, 1838, s. 59 of which provides that any agreement for the letting of a house of residence in which any spiritual person may be required to reside or of the buildings, gardens, orchards or appurtenances necessary for the convenient occupation of the same shall contain the provisions there laid down (*Bishop of Gloucester* v. *Cunnington* [1943] 1 K.B. 101). In *Neale* v. *Jennings* [1946] 1 All E.R. 224, it was held that the question of whether buildings were necessary for the convenient occupation of the parsonage house was one of fact, and it would seem equally a question of fact whether a residence is one in which a spiritual person may be required to reside. Since the church with which the vicarage was connected no longer exists it may be that the incumbent responsible for the parish could no longer be required to reside in the parsonage house. If, however, the two parishes have not been formally united there is a possibility that the church might be rebuilt and the benefice again held by a separate clerk, in which case he would be required to reside in the parsonage house. In our opinion, if there is a possibility of the house again being required as a vicarage, it will remain outside the Acts, but if the benefice has been united (under a scheme made pursuant to the Union of Benefices Measure, 1923) with that of the adjoining parish, the vicarage would appear now to be controlled by the Rent Acts. The matter is, however, one of considerable difficulty upon which we know of no direct authority.

SOCIETIES

THE LAW ASSOCIATION

CHRISTMAS!

"I don't care much for Christmas these days; I'll be glad when it is over!"

Common enough sentiments these days. You hear them from the lips of lonely folk, whose children have grown up and left home or maybe have died in the war. You hear them from the lips of ageing spinsters who have devoted their lives to the care of aged relatives and are now left alone. You hear them from the lips of those who don't know where to turn for the money to buy presents or a Christmas dinner for the children, especially widows struggling to bring up a young family single-handed. There is a bitterness in being lonely and poor and drab when the world around is festive and gay and friendly.

To a relatively small number from among the many who feel this way, the Law Association can bring not only a gift but the warmth of friendship which a gift implies. Warm clothing, groceries, pots of flowers, with personal greetings cards, given in addition to the usual "Christmas box," and where possible delivered personally by the secretary and one of the directors, go a long way towards cheering the old and lonely.

Readers who are fortunate enough to look forward to a happy and plentifully supplied Christmas are asked to send a gift in gratitude. Those who are themselves looking forward to a lonely Christmas, perhaps with a gap in the family circle, might let their understanding and sympathy take a practical form in extending the hand of friendship to a fellow-sufferer. Donations—earmarked Christmas Gift Fund—should be sent to the Secretary, Law Association, 25 Queensmere Road, S.W.19.

The LAW STUDENTS' DEBATING SOCIETY, held at The Law Society's Court Room, 60 Carey Street, Chancery Lane, W.C.2, on Tuesdays, at 7 p.m., announces the following debates: 5th December, "That this House would welcome the abolition of the House of Lords" (Viscount Hailsham opposing); 12th December, "That no greater disaster could befall this country than to be involved in a third world war"; 19th December, "That Santa Claus should not have been canonized." Visitors are welcome at all debates.

NOTES OF CASES

HOUSE OF LORDS

ADMINISTRATION: MONEY WRONGLY DISTRIBUTED TO CHARITIES: RIGHT OF NEXT OF KIN TO RECOVER

***In re* Diplock; Minister of Health *v.* Simpson and Others**

Lord Simonds, Lord Normand, Lord Oaksey, Lord Morton of Henryton and Lord MacDermott
23rd November, 1950

Appeal from a decision of the Court of Appeal ([1948] Ch. 468; 92 SOL. J. 409, 484) reversing a decision of Wynn Parry, J. ([1947] 1 Ch. 716; 91 SOL. J. 248).

The testator, who died in 1936, by his will directed his executors to divide his residue between such "charitable institutions or other charitable or benevolent objects" as they shall think fit. During 1936, 1937 and 1938 the executors distributed £203,067 between 139 properly designated charitable institutions. In September, 1939, certain next-of-kin challenged the validity of the gift and the executors on 18th October, 1939, warned all the recipients accordingly. It was held by the House of Lords in *Chichester (etc.)* v. *Simpson* [1944] A.C. 341; 88 SOL. J. 246, that the gift of residue was void for uncertainty. The plaintiffs, who were the next-of-kin and the judicial trustees of the will, started some 120 actions to recover the moneys paid to the charities. In April, 1944, the court made an order approving the compromise of the plaintiffs' claims against the executors, without prejudice to the claims of the plaintiffs against the charities. Wynn Parry, J., heard together nineteen actions which were typical of the various classes of claim. In all cases the distribution had been made by cheque, accompanied by a letter which stated that the testator had bequeathed his residue amongst such institutions "or other charitable and benevolent objects" as his executors might select. In the majority of cases the cheque was paid into the institution's current account, which was in some cases overdrawn and in others in credit. In some cases the cheque was paid into a separate account. In a few cases the executors made a condition that the money should be applied to a specified purpose. The plaintiffs claimed a declaration that the institutions were liable to refund to the judicial trustee the sums paid, or alternatively a declaration that they were entitled to a charge on any assets which included any part of the residue. It was conceded that the plaintiffs could not claim at first instance that the defendant institutions took with notice, or that they were express trustees. Wynn Parry, J., in each of the nineteen actions rejected the claim *in personam*. In some of them he allowed the claim *in rem*. The plaintiffs appealed. The Court of Appeal heard the appeals together. In each of them it allowed the plaintiffs' claim *in personam* and in some cases (but not in the present case) allowed their claim *in rem* to a substantially greater extent than did Wynn Parry, J. The court also held that s. 20 of the Limitation Act, 1939, prescribing a twelve-year period, applied. In seven of the cases petitions of appeal to the House of Lords were presented, but only the present case so far was proceeded with, the Minister of Health now taking the place of the original defendants, the Westminster Hospital.

The House took time for consideration.

LORD SIMONDS said that the authorities established that, subject to certain qualifications, the next-of-kin had a direct claim in equity against the persons to whom the testator's residuary estate had been wrongly distributed. While in the development of the jurisdiction of the Court of Chancery relating to the administration of the assets of a deceased person certain principles were established which were common to it and to the comparable jurisdiction in the execution of trusts, there was no justification for denying the possibility of an equitable right in the administration of assets because no comparable right existed in the execution of trusts. The whole position was illuminated by the statement of Lord Davey in *Harrison* v. *Kirk* [1904] A.C. 1, at p. 6. It would be strange if a court of equity whose duty it was to see that the assets of a deceased person were duly administered and came into the right hands devised a remedy for the protection of the unpaid creditor, but left the unpaid legatee or next-of-kin unprotected. It had been argued that it was only in a limited class of case that the spiritual court required a legatee, who was paid his legacy, to give security (*a*) to meet the contingency of further creditors appearing, and (*b*) to meet the case of a deficiency of assets to pay all legacies of equal rank *pari passu*; and that the remedy which the Court of Chancery should give was similarly circumscribed. But there was no justification for regarding the equitable doctrine of the Court of Chancery as limited by the previous practice, if it was the practice, of the spiritual court. The right of an underpaid legatee to claim against an overpaid legatee was subject to the qualification that he must first exhaust his remedy against the executor who had made the wrongful payment. The next-of-kin must be deemed to have recovered from the executors all that they could recover. They had no other way to recover the balance than by proceeding directly against the institutions among whom the estate had been distributed. It had been said that the equitable remedy, even where it existed, was only available to an unpaid creditor or legatee if the estate had been administered by the court. There was no ground for that broad distinction, though it might well be that, where the executor had distributed the estate by an order of the court, the unpaid creditor would not be required to bring a further action against him before proceeding against persons wrongfully paid. *David* v. *Frowd* (1833), 1 My. & K. 200, was fatal to the Minister's argument that the equitable remedy was confined to the cases of unpaid creditor or legatee. The hospital in question received £4,000 for no other reason than that the executors thought it a proper object of the testator's bounty. A person so receiving money from the estate of a testator was not in a different position from any other person to whom money was paid on the footing that under the testator's will money could be lawfully paid to him, though in fact the payment was wrongful. The Minister argued that the equitable remedy was subject to the qualification that it was not applicable where the wrongful payment was made in error of law. That argument was misconceived: in none of the cases where the equity was applied was any suggestion made that the issue depended on the nature of the mistake. It was further argued that the Court of Chancery acted in conscience and, unless a defendant had behaved unconscientiously, would not make a decree against him; the hospital, having received a legacy in good faith and spent it without knowledge of any flaw in their title, ought not in conscience to be ordered to refund. There was little help in such generalities. The rule of equity in question did not excuse the wrongly paid legatee from repayment because he had spent what he had been wrongly paid. Further, the plaintiffs had done nothing to bar them in equity from asserting their rights. They could be defeated only if they were barred by some Statute of Limitations. The only statute now applicable was the Limitation Act, 1939, and the question was which section applied. The plaintiffs asserted, and the Minister denied, the applicability of s. 20. The present action was precisely within it, and the relevant period had not expired before it was brought. The appeal would be dismissed.

The other noble lords agreed. Appeal dismissed.

APPEARANCES: *Gerald Upjohn*, K.C., *D. B. Buckley* and *G. C. D. S. Dunbar* (*Trollope & Winckworth*); *Pascoe Hayward*, K.C., and *J. L. Arnold* (*White & Leonard*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

DEFENDANT'S PAYMENT INTO COURT: EFFECT ON ORDER AS TO COSTS

Findlay *v.* Railway Executive

Somervell, Cohen and Denning, L.JJ.
24th October, 1950

Appeal from Byrne, J.

The plaintiff was in 1947 injured in a railway accident by reason of the negligence of the defendants' servants. She recovered by way of damages in her action a sum less by 5 per cent. than the sum which the defendants had (in 1949) paid into court, admitting liability. Byrne, J., holding that he had an absolute discretion in the matter, gave the plaintiff the costs of the action notwithstanding the payment in. The defendants appealed by his leave.

SOMERVELL, L.J., referred to R.S.C., Ord. 22, r. 6, and to the speech of Lord Cave in *Donald Campbell & Co., Ltd.* v. *Pollak* [1927] A.C. 733, at p. 809, approving the judgment of Lord Sterndale, M.R., in *Ritter* v. *Godfrey* [1920] 2 K.B. 47, and said that the first question was whether a defendant who had paid money into court which had not been taken out and which exceeded the sum awarded to the plaintiff was a successful party or a successful litigant within those statements of the law. He held that he was, and that the principles there laid down applied. The main purpose of the rules for payment into court, and the reason why the rules invited that procedure, was the hope that further litigation would be avoided and the plaintiff would be encouraged to take out the sum, if it were reasonable; whereas, if he continued and obtained a smaller sum, he would be penalised wholly, or at any rate to some extent, in costs. Therefore, once the money had been paid in, the *lis* between the parties simply was whether that sum was sufficient to cover the damage which had been suffered. *Prima facie*, therefore, the defendants here were entitled to be paid their costs as from the date of payment in. But there might be circumstances connected with the case which entitled the judge to make some order other than that of giving the successful litigant his costs. On behalf of the plaintiff it was submitted that there were such circumstances here. The first was that the disfigurement which the plaintiff suffered left a scar, and that it was very difficult to estimate the sum likely to be awarded for that type of personal injury. He (his lordship) did not accept that disfigurement was specially difficult to estimate. In his opinion, the most difficult matter to estimate was loss of earning power in the future, an ingredient which did not arise here. That submission, therefore, failed both *in limine* and in principle. The fact that the particular issue as to damages in any case was a difficult one was not relevant to the mind of the judge when he took into account, as he had to under the rule, the effect of payment into court in relation to the sum awarded. The plaintiff's second point was that the judge's assessment of damages was very near the amount paid in, and that in those circumstances the judge was entitled to say that the defendants did not wholly succeed on the issue as it had then become. But counsel had agreed that if a jury or a judge awarded a sum, however small, which exceeded, by however small an amount, the sum paid in, the plaintiff would be clearly entitled to judgment for that sum with costs. The same principle must apply, even though the margin between what the judge awarded and what was paid in was small, on the issue as it had become on which the defendants had wholly succeeded. There were no special circumstances justifying giving the plaintiff the costs of the action in disregard of the defendants' payment in, and the appeal would be allowed.

COHEN and DENNING, L.JJ., gave judgments agreeing. Appeal allowed.

APPEARANCES: *M. Berryman*, K.C., and *W. G. Wingate* (*M. H. B. Gilmour*); *C. L. Henderson*, K.C., and *C. G. A. Cowan* (*Rule & Cooke*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

WIFE FILING NO ANSWER: RIGHT OF APPEAL

Gillooly *v.* Gillooly

Bucknill, Singleton and Birkett, L.JJ.
1st November, 1950

Appeal from Judge Rhodes sitting as divorce commissioner at Manchester.

The appellant husband petitioned for divorce on the ground of his wife's desertion. He had put in a discretion statement admitting certain acts of adultery. Shortly before the hearing he put in another such statement disclosing further adultery with a woman whom he wished to marry. The wife had written to the husband's solicitors before the petition was presented, making it clear that she did not intend to appear. In fact she neither entered an appearance nor filed an answer to the petition. The commissioner found the desertion by the wife proved, but refused to exercise his discretion in favour of the husband, and dismissed the petition. The husband sent the wife a notice of the appeal. She, having been given a poor person's certificate, presented a petition for divorce on the ground of the husband's adultery as disclosed in his discretion statements, and she now sought to appear by counsel to oppose the appeal. For the husband it was contended that under the Matrimonial Causes Rules, 1947, the wife, not having entered an appearance in the court below, could not be heard on the appeal when she had not applied for or been given leave to appeal. The court heard the appeal on the merits.

BUCKNILL, L.J., said that he would have had difficulty in holding that the wife had a right to appear on the appeal if the court had only had to consider the Matrimonial Causes Rules, 1947. The matter was, however, made clear by R.S.C., Ord. 58, r. 2. The Rules of the Supreme Court applied to the Divorce Court except in so far as they were amended by or in direct variance with the Matrimonial Causes Rules. Notice of appeal had been properly served on the wife by the husband's solicitors, and it was impossible to hold that she was not a "party affected" by the appeal, notwithstanding that she had not appeared to the petition or filed an answer. In his opinion the court had been right in allowing the wife's counsel to address them on the merits of the appeal. The court would allow the appeal and grant the husband a decree; but it would extend to two months the period for making the decree absolute, in order to enable the wife to take legal advice with regard to proceeding with her own petition or placing the matter before the King's Proctor.

SINGLETON and BIRKETT, L.JJ., agreed. Appeal allowed.

APPEARANCES: *J. G. Wilmers* (*A. M. V. Panton, The Law Society Services Divorce Department*); *F. Cridlan* (*Kimbers, Williams, Sweetland & Stinson*, for *A. V. Gregory, Phelps & Co.*, Cheltenham).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

MOTOR-CAR AND REGISTRATION BOOK: FRAUDULENT SALES

Pearson *v.* Rose & Young, Ltd. (Others, third and fourth parties)

Somervell and Denning, L.JJ., and Vaisey, J.
1st November, 1950

Appeal from Devlin, J.

The plaintiff, the owner of a motor car, handed it over to one, Hunt, a motor-car dealer and repairer, for certain repairs to be effected and also for the dealer to see what offers were forthcoming for the car in view of his assurance to the owner that he would be able to procure him a new car. On the same day the dealer obtained possession of the registration book of the car by means of a trick. Immediately afterwards he sold the car with its book to the fourth party and pocketed the proceeds. The fourth party, also a motor-car dealer, bought the car in good faith. He soon sold it to the third party at a very substantial profit. The third party sold it to the defendants, from whom the plaintiff

claimed the return of the vehicle. The defendants claimed indemnity from the third party, who in turn claimed an indemnity from the fourth party, who relied on s. 2 (1) of the Factors Act, 1889. By that subsection: "Where a mercantile agent is, with the consent of the owner, in possession of goods . . . any sale . . . of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall . . . be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the person taking" the goods "acts in good faith, and has not at the time" of the sale "notice that the" seller "has not authority to make the same." Devlin, J., held the fourth party protected by the subsection and dismissed the action. The plaintiff appealed. (*Cur. adv. vult.*)

SOMERVELL, L.J., said that it was clear that the vendor of a second-hand car would ordinarily deliver, and the purchaser would ordinarily require delivery of, the log book. Cars could be sold without their log books, but the price would be substantially reduced thereby. That showed, and he held, that a sale of a car without its log book would not be a sale "in the ordinary course of business." The transaction which the fourth party sought to uphold was the sale of the car with its log book, a more valuable subject-matter than a car without its log book. Hunt was never in possession of the registration book with the consent of the plaintiff, its owner. Had his mind been directed to the matter immediately after he had left the premises, the plaintiff would have gone back and collected the book. The ostensible authority, which enabled Hunt to effect a sale "in the ordinary course of business", was derived from his possession of the book, which he had without the owner's consent. On those conclusions he (his lordship), though a registration book was, of course, not a document of title, was of opinion that the fourth party could not claim the protection of the Factors Act. On the question whether s. 2 (1) of the Factors Act applied where goods were obtained from their owner by means of larceny by a trick, there was no clear decision. In *Folkes* v. *King* [1923] 1 K.B. 282, at pp. 297–298, and pp. 305–306, Bankes and Scrutton, L.JJ., respectively, expressed the view that, where there was larceny by a trick, the goods were none the less in the possession of the agent with the consent of the owner, so that the Act of 1889 applied. In *Oppenheimer* v. *Frazer* [1907] 2 K.B. 50, the contrary opinion had been expressed *obiter*. Lord Sumner set out the two divergent views without expressing any view on them in *Lake* v. *Simmons* [1927] A.C. 487, at pp. 509–510. He (Somervell, L.J.) agreed with the conclusions and reasoning of Bankes and Scrutton, L.JJ., in *Folkes* v. *King*, *supra*. The appeal should be allowed.

DENNING, L.J., and VAISEY, J., read concurring judgments. Appeal allowed.

APPEARANCES: *Cartwright Sharp*, K.C., and *F. Mattar* (*Amery-Parkes & Co.*); *D. Weitzman* (*Rich & Hughes; Archibald C. Wood & Co.; Sidney L. Samson*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

WILL: CONDITION IN RESTRAINT OF MARRIAGE OR DISPOSITION IN CASE OF MARRIAGE

In re Fentem; Cockerton *v.* Fentem

Harman, J. 3rd November, 1950

Adjourned summons.

By her will dated 28th February, 1935, the testatrix directed her trustees to pay the income of her residuary estate to her sister M during her life, and after her death to her brother T during his life, "and at the death of the survivor in case he shall not have married . . . to his personal representative but in case he shall have married . . . to [X] during life and after his death the capital and income" to a charity. T married on 3rd April, 1935; the testatrix died on 8th March, 1938; and the sister M died on 26th October, 1948.

HARMAN, J., said that he thought it was agreed that conditions in restraint of marriage, if general, were at least *prima facie* void as being contrary to public policy; see Younger, J., in *In re Hewett* [1918] 1 Ch. 458, 467. That case showed that motive was a material matter to consider. In the present case there was no motive on the part of the testatrix to prevent her brother from marrying. The clause did not punish him in any way. She merely provided that, if he did marry, she was going to dispose of the remainder and not he. It clearly could not have operated to prevent him from marrying, because he married before the will became an effective document. Declaration that T should continue to receive the income during his life and, after his death, the directions in favour of X and the charity should take effect.

APPEARANCES: *M. G. Hewins* and *W. S. Wigglesworth* (*Woodcock, Ryland & Co.*, for *Goodwin & Cockerton*, Bakewell); *G. C. Raffety* and *John Monckton* (*Sharpe, Pritchard & Co.*, for *Sedgwick, Turner, Sworder & Wilson*, Watford).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

PURCHASE TAX: KITS FOR MAKING MODEL AIRCRAFT

Commissioners of Customs and Excise *v.* E. Keil and Co., Ltd.

Croom-Johnson, J. 23rd October, 1950

Action.

The defendants manufactured and sold (*a*) construction kits for the making of model aircraft and ships, and (*b*) various parts of model aircraft and ships such as rubber wheels and fuel tanks. The commissioners in this action claimed a declaration that both types of commodity were "chargeable goods" for the purposes of purchase tax under s. 20 of the Finance Act, 1948, and group 20 of Sched. VIII to the Act. The company contended that group 20 was not wide and clear enough in its terms to cover the goods in question. By s. 20 of the Act of 1948: ". . . Pt. I of Sched. VIII to this Act shall have effect . . . for determining what goods are chargeable goods for the purposes of purchase tax . . ." Group 20 of Sched. VIII specifies: "Toys and games . . . and appliances, apparatus, accessories and requisites for sports, games, amusements . . . including parts thereof and accessories thereto."

CROOM-JOHNSON, J., said that the company argued that, as they merely sold pieces of material which could be implemented by the addition of other parts, no purchase tax was imposed on such goods. He had considered the word "toy" as defined in the dictionaries, and was of the opinion that the articles in the first category might well be toys. The facts remained, however, that the articles in the first category were not made up, and that those in the second were merely parts. Without deciding whether the assembly of models was a sport or a game, he thought that it was an "amusement." It had been argued for the company that it could not be a pastime or amusement as a great deal of scientific knowledge was required for the construction of the models; but that was not the test. The parts of model aircraft in the second category were necessarily included in group 20 once he had decided, as he had, that the construction kits were within it. Declaration as prayed for.

APPEARANCES: *J. P. Ashworth* and *R. J. Parker* (*Solicitor of Customs and Excise*); *Dudley Collard* and *J. W. Borders* (*Seifert, Sedley & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Colonial Development and Welfare Bill [H.C.] [21st November.
Dangerous Drugs (Amendment) Bill [H.C.] [21st November.
European Payments (Financial Provisions) Bill [H.C.] [23rd November.
Exchequer and Audit Departments Bill [H.C.] [21st November.
Restoration of Pre-War Trade Practices Bill [H.C.] [21st November.
Solicitors Bill [H.C.] [21st November.
Superannuation Bill [H.C.] [21st November.

Read Second Time :—

Expiring Laws Continuance Bill [H.C.] [23rd November.
Penicillin (Merchant Ships) Bill [H.C.] [23rd November.
Transport (Amendment) Bill [H.L.] [21st November.

Read Third Time :—

Glasgow Corporation Sewage Order Confirmation Bill [H.C.] [22nd November.

B. Debates

Lord Mancroft rose to ask His Majesty's Government whether they were now prepared to appoint a Royal Commission to inquire into the confused state of the law regarding marriage, separation and divorce. He considered that the law of landlord and tenant was a mere spinney compared with the jungle into which the matrimonial laws of this country had developed or were in danger of developing. He was asking the Government to look into and overhaul the whole system.

Turning to specific matters, Lord Mancroft said the question of artificial insemination sorely needed investigation. Was artificial insemination by a donor adultery? Did not the doctors and registrars involved in the process commit perjury, fraud or conspiracy? What was the position with regard to the inheritance of titles and estates? And what about legitimacy? Secondly, there was the question of marriage with a divorced wife's sister. He knew of 417 couples who would marry if it were made legal to do so. Again, he hoped the recommendation of the Denning Committee on Divorce Procedure would be looked at—namely, that divorce should be granted where the parties had been separated for a long period of time and there appeared to be no possibility of reconciliation. As late as 25th March of this year the Court of Appeal had said that it might be a good thing if the court were given power to divorce in such circumstances. This had long been the law in Western Australia and in New Zealand and in the last session 200 M.P.s had put their names to a Bill to carry this suggestion into effect. He estimated that there were some 300,000 couples permanently separated either voluntarily or by the court and unable to remarry. Since 1939 some 30,000 men had been to prison rather than pay to their wives allowances ordered by the courts, and since 1946 about 300 to 400 men were estimated by the Attorney-General of Guernsey to have gone to that island because English maintenance orders were not enforceable there. In addition, there was the problem of the very large number of extra-marital unions of a permanent nature established in consequence of this state of affairs.

Lord Mancroft went on to say that it was estimated by the Marriage Law Reform Society that about 50 per cent. of undefended divorce cases were collusive, which meant that lying and perjury existed in half the undefended divorce cases heard by the courts to-day. It was a serious tragedy also if the fate of children could be used as a bargaining factor in divorce—if arrangements could be made over the telephone about the cost of divorce and the children's welfare, and these used as a method of screwing an extra penny out of an unfortunate person. Again, the petitioner's solicitor was compelled to ask whether the petitioner had committed any matrimonial offence—rightly or wrongly that was often resented and the lie inevitably told was seldom detected. Should the standard of proof be the same for adultery as was required by the criminal law? There was also the question as to whether incurable and habitual drunkenness and imprisonment for life should be made grounds for divorce. Did the evidence, he asked, show that the law was confused, illogical and in some cases falling into disrepute? Too often lying and perjury were regarded as matters of no importance. Too often the taking of an oath meant nothing. There was a demand for a Royal Commission, if only because a great number of His Majesty's subjects genuinely but unhappily thought that the matrimonial laws existed only to be broken or ignored.

The Archbishop of York asked whether the Royal Commission was intended to be used as a kind of rampart behind which additional grounds for divorce might be advanced? If so, he thought it would be against the public interest at the present time. The anxiety in the country to-day was not how to increase the grounds for divorces but how to decrease divorce. The increase in delinquency was said to be traceable to the greatly increased number of broken homes. Marriage was no longer regarded as a life-long sacrament, but as a contract which might be more or less easily broken. Lord Mancroft's suggestions, if his figures were correct, would lead to a considerable increase in the number of divorces. He doubted some of the figures because a large number of maintenance orders were withdrawn or came to an end every year. He had known people who repeatedly had separation orders; there was a reconciliation, then another quarrel and a further separation order.

To agree to divorce after seven years' separation was really to agree to divorce by consent—thus introducing an entirely new principle into English law, and a most dangerous principle. There were some people who believed that divorce was utterly wrong. We might enable a man who had wronged his wife by adultery to wrong her again by forcing her into a divorce which was against her conscientious convictions. Lord Mancroft's remarks about collusion were a grave reflection on our courts. At the time of the Herbert Act they had been assured that, with the increased facilities given thereby, collusion would come to an end. Now they were told that 50 per cent. of undefended cases were collusive.

Lord Merriman said that as one who had had some experience both in divorce and in rent restriction law he would plump for the Rent Restriction Acts every time as qualifying for the "jungle." Advantage had been taken in the Herbert Act to make a very wide sweep about divorce, and three major grounds of divorce and four new major grounds of nullity had been added to the Bill. Procedure had also been reformed, and that had been done again after the Denning Report, and at the present time the Rules Committee was again hoping to bring procedure up to date. Advantage had been taken by Private Members' Bills to introduce one major reform last year—that which enabled a wife to sue for maintenance without having to sue either for divorce or judicial separation.

He regarded the estimate that 50 per cent. of divorce cases were collusive as being absolutely fantastic. At the very outside when things had been at their worst he would have put the figure at 7 per cent. He was, of course, talking of collusion in the real sense of the word and would like to disabuse Lord Mancroft of the idea that merely to discuss in decency and amity the necessary arrangements which followed from a divorce suit made it a collusive suit. The essence of collusion was that there was corruption and fraud. Collusion might take one of two forms. There might be a bargain by both parties to impose a case on the court which they both knew to be false. This was nothing less than a conspiracy to defeat the ends of justice. Secondly, there were the cases where there was a genuine grievance which was used as a lever for blackmail, as when a wife or husband said: "I will not divorce you unless you will pay me so and so, or unless you do this, that or the other." That, again, would be a corrupt bargain. In the ordinary case where there had been some talk about the children, and some talk about maintenance, the wise party would lay the whole thing before the court—not because there was in fact collusion, but in order that there should be no suspicion of collusion.

As regards artificial insemination—in the Law Reform (Miscellaneous Provisions) Act recently there had been a drastic reform in the law of legitimacy, not only in A.I.D. cases but also in all nullity cases. He had thought over the question of adultery in cases of A.I.D. and he saw no reason to withdraw from his earlier view, namely, that as the law stands at present, A.I.D. could not possibly constitute adultery. So far as the point about discretion statements was concerned—unless

Lord Mancroft was prepared to say that there should be no discretionary bars at all to divorce, that conduct conducing to adultery, desertion and the rest should not be grounds which entitled a court to refuse to pronounce a decree, there was no question at all except the stage at which the petitioner should make the required disclosure.

Divorce after seven years' separation would not merely be a new ground for divorce—it would be a complete and fundamental departure from the principle upon which divorce had hitherto been granted, which was that matrimonial relief should only be granted as a remedy for a proved wrong, leaving aside, that was, cases of insanity, which were really cases of " Act of God." As soon as one introduced the idea that the will of the parties, and nothing but the will of the parties, was to be decisive, provided that a certain length of time had elapsed, one introduced an entirely new principle into divorce.

LORD CHORLEY said an eminent solicitor whose firm handled a number of problems of this kind, as well as a great deal of other general legal business, had recently told him that the whole administration of the law was being brought into discredit by the divorce situation at the present time, and he, Lord Chorley, suggested that solicitors who were brought more closely into contact with the people who were suffering under the system were in an even better position to judge than the divorce judges. The law was confused in relation to non-access as in *Baxter* v. *Baxter*. Conflicting decisions in the Court of Appeal and at first instance could be found on cruelty, condonation, desertion and separation. Again, everyone knew that in many " hotel cases " the husband had gone through a formal act which everyone knew was not really adultery. LORD MERRIMAN interjected that this would be a conspiracy to defeat the ends of justice. LORD CHORLEY said he was surprised to hear it described as a conspiracy—the wife did not necessarily agree to this, but everyone knew it often happened.

Replying to the debate, the LORD CHANCELLOR said he denied categorically that the number of collusive divorce cases was 50 per cent. or anything like that. He had discussed this matter with his brother judges and with the divorce commissioners, and he thought that the number of hotel cases was nothing like what it used to be in the old days. With regard to A.I.D. he said he thought it was perfectly plain that if the husband and the mother of a child born of this operation registered it as the husband's child, they committed an offence—either conspiracy or perjury—though he did not want to express a final opinion as he might have to decide the point judicially one day.

Divorce after seven years' separation had been discussed as being divorce by consent. It was not divorce by consent. It was a divorce which a guilty party might well force upon an unwilling innocent party. The period of seven years might also be reduced by future governments to five, to three, and perhaps even one year. He was not anxious for a Royal Commission to be set up at the present time, although he did not want to close the door against it. He wanted to see what was the impact of the new Legal Aid Scheme on the divorce lists. There was also a Private Member's Bill coming up, when the question of divorce after long separation could be thoroughly discussed. Replying to a question by the EARL OF IDDESLEIGH, Lord Jowitt said that one court welfare officer had been appointed last term, and the value of the appointment was being tested out. His function was to be in court so that if a judge had to deal with a disputed custody case and found himself in a difficulty, he could send the officer round to make inquiries, and the officer would report back to the court. During one term the officer had investigated twelve cases out of 150 cases of disputed custody. If the work was found to be valuable in London it would be extended to the provinces.

LORD MANCROFT withdrew his motion.

[23rd November.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Alkali, &c., Works Regulation (Scotland) Bill [H.C.] [22nd November.

To authorise the making of orders extending or amending the provisions of the Alkali, &c., Works Regulation Act, 1906, in their application to Scotland; and to make provision for authorising inspectors under that Act in Scotland to inspect any works which are of a character likely to cause the evolution of noxious or offensive gases.

Hackney Carriages (London) Bill [H.C.] [21st November.

To amend the law relating to hackney carriages in London.

Leasehold Property (Temporary Provisions) Bill [H.C.] [20th November.

To make temporary provision for the protection of occupiers of residential property against the coming to an end of long leases, and for the renewal of tenancies of shops; and for purposes connected with the matters aforesaid.

Livestock Rearing Bill [H.C.] [22nd November.

To extend and amend the provisions of the Hill Farming Act, 1946, relating to the rehabilitation of hill farming land, the payment of subsidies in respect of hill sheep and hill cattle and the control of rams in England and Wales; to make fresh provision with respect to the exercise of the functions under that Act of the Minister of Agriculture and Fisheries and the Secretary of State; and for purposes connected with the matters aforesaid.

Read Second Time :—

Administration of Justice (Pensions) Bill [H.C.] [20th November.

Festival of Britain (Sunday Opening) Bill [H.C.] [23rd November.

Public Works Loans Bill [H.C.] [21st November.

Reinstatement in Civil Employment Bill [H.C.] [22nd November.

B. DEBATES

Moving the Second Reading of the **Administration of Justice (Pensions) Bill,** the ATTORNEY-GENERAL said the Bill was designed to make better provision as to pension arrangements for judicial officers. It applied to His Majesty's judges of all ranks in the United Kingdom, and to the judicial officers mentioned in the Schedule. The Bill applied to a variety of people receiving a variety of salaries, but all occupied judicial offices in the discharge of which they had to be immune from financial influences. Although all at present had certain pension rights, none of them enjoyed any special provision for their widows and children on their death. As in modern conditions it was not possible to accumulate substantial savings out of earnings as the busy practitioner had been able to do in days gone by, the financial anxieties involved were apt to deter from accepting office those who would otherwise be best qualified for the Bench.

The Bill had a twofold purpose. Firstly, it effected, without cost to the State, a readjustment of present pension arrangements which was optional to present office-holders. Secondly, it provided on a basis of fifty-fifty contribution from the State a scheme for the provision of pensions for widows and children. The Bill did not deal with and was entirely without prejudice to the question of judicial salaries, and it was not in any way the result of a bargain with the judges. The first change effected was that pensions paid as annuities could be exchanged for smaller annuities plus a lump sum on retirement, or death gratuity in the event of death whilst holding office. The lump sum would not attract tax. The second object, that of pensions for widows and children, would be achieved by the judge foregoing a part of the lump sum referred to above, to which would be added a fifty-fifty contribution by the State. It was estimated that the maximum cost to the State would be about £40,000 a year.

Mr. MANNINGHAM-BULLER said the scheme did not increase the attractiveness of any of the offices concerned, and he was sorry that something was not done under the Bill to increase the emoluments of judges. He thought that as between the High Court and the county court judges, the latter had the better claim. He doubted very much whether the benefits likely to be received under the Bill were commensurate with the sacrifice of a quarter of the pension which was involved. He also regretted that nothing had been done for the judges' clerks, who received a salary of £650 a year and neither pension nor gratuity.

Mr. LESLIE HALE said in 1931 when Parliament proposed to reduce the judges' salaries there was something like a constitutional crisis, but when Parliament proposed to increase the salaries it was unanimously agreed that it could do so. Mr. Hale considered that some regulations should be introduced about the qualifications of a Lord Chancellor. At present he need not have any legal qualification of any kind. In discussing judicial salaries it was irrelevant to quote the figures of 1809—a period of inflation. In Henry III's reign the salary of a judge was £6 14s. a year. He did not accept that their salaries were at present too low. The pensioner's 26s. a week was subject to tax in certain circumstances, whereas the Bill sought to evade tax

on part of judicial pensions. The Government should pay attention to the need for proper contributory pensions for everyone, especially the middle classes.

In reply, Sir HARTLEY SHAWCROSS said there was no question of tax evasion by the judges. They were following precedents established over a number of years, more especially the Superannuation Act, 1949. [20th November.

C. QUESTIONS

The ATTORNEY-GENERAL stated that the 1940 regulations for the deposit of wills by living persons were made as a temporary expedient during the war-time transfer of the Principal Probate Registry to Llandudno, and on its return to London the peace-time procedure had been restored. There was no reason, however, why people wishing to deposit wills should not be allowed to do so by post, and the regulations were being amended accordingly. [20th November.

Mr. GAITSKELL stated that single-plot owners whose land was compulsorily acquired under the Town and Country Planning Act, 1947, would receive 100 per cent. compensation for loss of development value when the £300,000,000 fund was distributed, commencing in 1953. [21st November.

STATUTORY INSTRUMENTS

Draft **Double Taxation Relief** (Taxes on Income) (Brunei) Order, 1950.

Factories (Evening Employment) Order, 1950. (S.I. 1950 No. 1837.)

Folkestone-Brighton-Southampton-Dorchester-Honiton Trunk Road (Millbrook Diversion) Order, 1950. (S.I. 1950 No. 1854.)

Gas (Conversion Date) (No. 22) Order, 1950. (S.I. 1950 No. 1846.)

Lancashire River Board Constitution Order, 1950. (S.I. 1950 No. 1843.)

London Traffic (Prescribed Routes) (No. 18) Regulations, 1950. (S.I. 1950 No. 1851.)

London Traffic (Prescribed Routes) (No. 19) Regulations, 1950. (S.I. 1950 No. 1839.)

London Traffic (Prohibition of Waiting) (High Street and London Road, Sevenoaks) Regulations, 1950. (S.I. 1950 No. 1840.)

Made-up Textiles Wages Council (Great Britain) (Constitution) Order, 1950. (S.I. 1950 No. 1838.)

Merchant Shipping Act, 1950 (Commencement) Order, 1950. (S.I. 1950 No. 1845 (C).)

This order brings the provisions of the Act into force on 10th December, 1950.

Perambulators (Maximum Prices) (Amendment) Order, 1950. (S.I. 1950 No. 1844.)

Perth-Aberdeen-Inverness Trunk Road (Longforgan Junction Improvements) (Variation) Order, 1950. (S.I. 1950 No. 1852.)

Retention of Pipes and Cables under Highway (Suffolk) (No. 1) Order, 1950. (S.I. 1950 No. 1827.)

Safeguarding of Industries (Exemption) (No. 12) Order, 1950. (S.I. 1950 No. 1848.)

Special Roads (Procedure) Regulations, 1950. (S.I. 1950 No. 1850.)

Stopping up of Highways (Denbighshire) (No. 2) Order, 1950. (S.I. 1950 No. 1829.)

Stopping up of Highways (Gloucestershire) (No. 6) Order, 1950. (S.I. 1950 No. 1830.)

Stopping up of Highways (Huntingdonshire) (No. 1) Order, 1950. (S.I. 1950 No. 1833.)

Stopping up of Highways (Kent) (No. 5) Order, 1950. (S.I. 1950 No. 1832.)

Stopping up of Highways (London) (No. 13) Order, 1950. (S.I. 1950 No. 1831.)

Stopping up of Highways (Somerset) (No. 3) Order, 1950. (S.I. 1950 No. 1828.)

Stopping up of Highways (Staffordshire) (No. 3) Order, 1950. (S.I. 1950 No. 1853.)

West Surrey Water Order, 1950. (S.I. 1950 No. 1847.)

Whaling Industry (Ship) Regulations, 1950. (S.I. 1950 No. 1834.)

Wigan Water Order, 1950. (S.I. 1950 No. 1857.)

NOTES AND NEWS

Honours and Appointments

Mr. R. E. SEATON has been appointed Deputy Chairman of the Court of Quarter Sessions for the eastern division of Sussex.

Mr. A. G. LUNT has been appointed registrar of Petersfield County Court.

Sir GERALD HOWE, K.C., Attorney-General, Nigeria, has been appointed Chief Justice of the Supreme Court of Hong Kong.

Mr. N. K. COOPER, assistant solicitor to Gloucestershire County Council, has been appointed to a similar position with Dorset County Council.

Mr. R. N. HUTCHINS has been appointed chief law officer for Bracknell Development Corporation. He will be succeeded as assistant solicitor to Derbyshire County Council by Mr. HARRY CROSSLEY.

Mr. W. M. ROBINSON, formerly legal assistant with Morecambe Borough Council, has been appointed assistant solicitor to Newark Borough Council.

The following appointments are announced in the Colonial Legal Service: Mr. T. V. A. BRODIE, Senior Federal Counsel, Federation of Malaya, to be Legal Draftsman, Federation of Malaya; Mr. A. LONSDALE, Crown Counsel, Hong Kong, to be Legal Draftsman, Gold Coast; Mr. A. MCKISACK, Attorney-General, Zanzibar, to be Secretary to Ministry of Justice and Solicitor-General, Gold Coast; Mr. J. P. MURPHY, Attorney-General, Gambia, to be Attorney-General, Zanzibar; Mr. P. CLARKE to be Magistrate, Gold Coast; and Mr. P. C. HOLLAND to be Crown Counsel, Gold Coast.

Personal Notes

Mr. R. G. Davies, solicitor, of Llangefni, was married on 18th November to Miss Mary Beta Jones, of Gaenfawr.

Mr. H. J. Mackin, solicitor, of Newcastle-upon-Tyne, was married on 18th November to Miss Margaret Ann Fittes, of Heaton.

Miscellaneous

The Croydon Courts annual dinner, with His Honour Judge Sir Gerald Hurst, K.C., presiding, and organised under the chairmanship of Mr. Registrar Bruce Humfrey, was held on 17th November. The principal guests were Mr. Justice Collingwood and Lady Collingwood and the Mayor and Mayoress of Croydon. Among the company of 256 were, with their ladies, Judges Tudor Rees, D.L. (Chairman of Surrey Sessions), Wilfrid Clothier, K.C., and Gordon Clark, Master Hawkins and several Registrars, Mayors and Town Clerks, chairmen and clerks of urban councils, and many magistrates, barristers, solicitors and officials and their staffs. The speeches were followed by dancing and cabaret.

A double taxation agreement has been concluded between the United Kingdom and Brunei. In general, the arrangements, which have been published as a schedule to a draft Order in Council, follow the same pattern as the arrangements previously made with other colonies.

THE SOLICITORS ACTS, 1932 to 1941

On the 17th day of November, 1950, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of ERIC NEVILL, at present confined in His Majesty's Prison, The Verne, Portland, in the county of Dorset, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

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